

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA
IN RE: TOBACCO LITIGATION

Civil Action No. 00-C-6000

DEPOSITION OF: SUZANNE LE VAN
DATE: Thursday, August 24, 2000
TIME: 10:05 a.m.
LOCATION: Dechert, Price & Rhoads
30 Rockefeller Plaza
New York, New York
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: PATRICIA M. MULLIGAN
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9 (INDEX AT REAR OF TRANSCRIPT)

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 STIPULATION

2 It is stipulated by and among
3 Counsel that this deposition is being taken in
4 accordance with the Federal Rules of Civil
5 Procedure; that all objections as to Notice of
6 this deposition are hereby waived; that all
7 objections except as to form are reserved until
8 the time of trial; and that the witness has
9 reserved the right to read and sign the deposition
10 after review by counsel.

11 * * * * *

12 SUZANNE LE VAN

13 being first duly sworn, testified as follows:

14 EXAMINATION

15 BY MR. GRUENLOH:

16 Q. Good morning, Miss LeVan.

17 My name is Mike Gruenloh. I'm
18 with the law firm of Ness, Motley. I represent
19 the plaintiffs in this case. How are you doing
20 this morning?

21 We just met a second ago. A
22 couple ground rules before we start. It's a
23 discovery deposition, so if you don't understand
24 my questions please let me know. It doesn't do
25 either one of us any good if we're not

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 understanding each other.

2 You can take breaks at any time.
3 Just let your counsel know, and we'll take a
4 break.

5 Who are you presently employed by?

6 A. Philip Morris.

7 Q. What's your position today?

8 A. Vice president of Philip Morris. Vice
9 president of premium brands of Philip Morris USA.

10 Q. Are you a Ph.D.?

11 A. No, sir.

12 Q. In your opinion does cigarette
13 smoking cause lung cancer and other serious
14 diseases?

15 MR. MC CONNELL: Object. Beyond
16 the scope of this witness' expertise, but you may
17 answer.

18 I would also object that this was
19 explored in the Oklahoma deposition by your firm,
20 but go ahead and answer.

21 A. Well, I'm not a scientist and I'm not a

22 doctor, so I'm not equipped to discuss the
23 technical aspects of causation, but I do believe
24 that cigarette smoking has a risk and is not
25 healthy.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Do you believe that cigarette
2 smoking causes lung cancer and other serious
3 diseases?

4 MR. MC CONNELL: Same objections.
5 A. Once again, I don't have the technical
6 expertise to answer a technical question, but I
7 do, indeed, believe that there's a risk
8 associated, that cigarette smoking increases your
9 chances of getting lung cancer or emphysema.

10 Q. Is it your testimony today that
11 cigarette smoking is a risk factor but it is not a
12 causal factor in serious diseases and lung cancer?

13 MR. MC CONNELL: Same objections.

14 A. I don't have technical knowledge of the
15 terms you're using, risk factor and causal factor.

16 Q. Who is Mr. Szymanczyk?

17 A. Mike Szymanczyk is the CEO of Philip
18 Morris USA.

19 Q. Are you aware of what his position
20 is on the question that I just asked you a moment
21 ago?

22 A. Not specifically in the terms that you
23 spoke of.

24 Q. Are you aware of what Philip
25 Morris' position is on whether cigarette smoking

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 causes lung cancer and other serious diseases?

2 A. Once again, I'm not equipped to talk about
3 the specific causation word that you're using. I
4 do believe that Philip Morris believes that there
5 is -- that there's a risk and that you're more
6 likely to have lung cancer if you smoke
7 cigarettes.

8 Q. Did you testify at the Engle trial
9 in Florida?

10 A. I did not testify at the trial.

11 Q. Did you read any of the
12 transcripts of the Engle trial?

13 A. I was deposed in the Engle trial.

14 Q. Did you read any of the
15 transcripts either of the deposition or trial
16 testimony of Mr. Szymanczyk in the Engle trial?

17 A. I read excerpts from Mr. Szymanczyk's
18 testimony that were in the press.

19 Q. Do you recall in reading those --

20 MR. GRUENLOH: Strike that.

21 Q. In the course of reading those do
22 you recall seeing what his position is on this
23 subject; i.e., whether cigarette smoking causes
24 lung cancer and other serious diseases?

25 A. I don't recall that.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Who's Ellen Merlo?
2 A. Our senior vice president of corporate
3 affairs for Philip Morris USA.
4 Q. Do you know what her position is
5 on this same subject?
6 A. I don't know specifically with regard to
7 the specific words you're talking about. I think
8 that Ellen and I have discussed that she also
9 believes that cigarette smoking is -- has a risk
10 of being harmful and is not healthy.
11 Q. In your opinion are cigarettes
12 addictive?
13 MR. MC CONNELL: Same objections.
14 A. I'm not a scientist. I'm not a doctor. I
15 don't have the expertise to speak to the technical
16 aspects of addiction. However, I can tell you my
17 personal point of view that some people have a
18 great deal of difficulty quitting smoking and
19 others don't.
20 Q. Is it your opinion that you have
21 to be trained and have a background in science in
22 order to tell me whether cigarettes are addictive?
23 MR. MC CONNELL: Same objections.
24 A. I believe that the word "addiction" means
25 many things to many different people, and in the
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 best definition it is a scientific definition as
2 to my understanding, and, therefore, I would want
3 to have scientific expertise before I gave a point
4 of view on that.
5 Q. Let's take a different word. In
6 your opinion are cigarettes dependence-producing?
7 MR. MC CONNELL: Same objections.
8 A. I don't use the phrase
9 "dependence-producing," and so I don't know what
10 it means.
11 Q. In your opinion are cigarettes
12 habituating?
13 MR. MC CONNELL: Same objections.
14 A. I don't use and understand the word
15 "habituating."
16 Q. Do you know if there's any
17 difference between those terms; addiction,
18 habituating, and dependence-producing?
19 MR. MC CONNELL: Same objection.
20 A. Once again, those are words that I'm not
21 familiar with, and so I'm not able to give you an
22 answer to that.
23 MR. GRUENLOH: I would like to
24 mark this as Exhibit Number 1.
25 (Whereupon, Exhibit 1 is marked
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 for identification by the reporter.)
2 Q. I've handed you what has been
3 marked Exhibit Number 1 to the deposition, and
4 I'll represent it's a printout of a page of Philip
5 Morris' web site. Have you seen this before?
6 A. I'm not certain that I've seen this
7 specific page before or not. I've been on the web

8 site, but I don't recall whether I've seen -- read
9 this page or not specifically.
10 Q. Did you do any market research or
11 is there any market research that you're aware of
12 that was done in relation to that web page?
13 A. I did not do any market research related
14 to this web page.
15 Q. Let me ask you, did you have
16 anything to do with putting together that web
17 page?
18 A. No, sir.
19 Q. Do you know who did at Philip
20 Morris?
21 A. No, sir.
22 Q. You said you've been on the web
23 page but you haven't seen that particular
24 document. Can you tell me the extent to which you
25 have gone on the web page and explored it, if you

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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 understand my question?
2 A. I've been on the web site at most a half a
3 dozen times, and the Philip Morris web site in
4 total includes lots of different areas, including
5 information about our organizational structure and
6 our financial structure, and I have not made any
7 in-depth studies of the web site.
8 Q. If you look at the first sentence
9 at the top, it reads, "There is an overwhelming
10 medical and scientific consensus that cigarette
11 smoking causes lung cancer, heart disease,
12 emphysema, and other serious diseases in smokers."
13 The second sentence, "Smokers are far more likely
14 to develop serious diseases, like lung cancer,
15 than nonsmokers."
16 Do you see that?
17 A. Yes.
18 Q. Have I read it correctly?
19 A. Yes.
20 Q. Is it fair to say since that's on
21 Philip Morris' web site that that is Philip
22 Morris' position on the issue?
23 MR. MC CONNELL: Objection. Calls
24 for speculation.
25 A. I can only take the sentence at face value

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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 that is saying that there is medical and
2 scientific consensus and that they are more likely
3 to develop serious diseases.
4 Q. But given the context of where
5 this has appeared in Philip Morris' web site isn't
6 it safe to say that Philip Morris believes what
7 they're saying here? They wouldn't put something
8 on their web site that they don't believe in,
9 would they?
10 MR. MC CONNELL: Same objection.
11 A. Philip Morris believes these two
12 sentences, that there is an overwhelming medical
13 and scientific consensus that smoking causes --
14 and Philip Morris also believes the second

15 sentence, that smokers are far more likely to
16 develop serious diseases.
17 Q. Were you aware of those two
18 positions prior to me asking you the question I
19 asked you at the beginning of the deposition this
20 morning?
21 A. Yes, sir.
22 Q. If you look down, the last
23 sentence on the first paragraph reads, "Smokers
24 and potential smokers should rely on these
25 messages in making all smoking-related decisions."
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 I'm sorry.
2 "These are and have been the
3 messages of public health authorities worldwide.
4 Smokers and potential smokers should rely on these
5 messages in making all smoking-related decisions."
6 Do you see that?
7 A. Yes, I do.
8 Q. And there Philip Morris is saying
9 smokers should now rely upon what the public
10 health authorities are saying about whether
11 smoking causes disease. Is that correct?
12 MR. MC CONNELL: You're just
13 asking what it says?
14 Q. Is that a fair reading --
15 A. This is saying that smokers should rely on
16 these messages in making their decisions about
17 smoking.
18 Q. Do you know when the public health
19 community reached the conclusion that smoking
20 causes lung cancer and other serious diseases?
21 MR. MC CONNELL: I'm going to
22 object to form.
23 A. Yeah. The public health community is a
24 lot of different things and a lot of different
25 people, so I don't know what you're specifically
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 referring to.
2 Q. Let's take the Surgeon General
3 then. Do you know when the Surgeon General first
4 concluded that cigarette smoking causes lung
5 cancer and other serious diseases?
6 MR. MC CONNELL: Objection.
7 Scope.
8 You can answer.
9 A. I don't know that specific date.
10 Q. Have you ever seen or reviewed the
11 1964 Surgeon General's report?
12 A. I'm aware of a Surgeon General's report in
13 the sixties. I assume that that is what you're
14 referring to.
15 Q. Are you aware that that 1964
16 Surgeon General's report concluded that smoking
17 causes lung cancer?
18 A. I don't know that it -- I don't know
19 whether or not it concluded that in those specific
20 terms.
21 Q. Well, I'll represent to you this

22 morning that it did. The 1964 Surgeon General's
23 report did, in fact, conclude that cigarette
24 smoking causes lung cancer.
25 MR. MC CONNELL: That's not
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 exactly right.
2 MR. GRUENLOH: I think that it is.
3 MR. MC CONNELL: Just to be
4 precise, that it causes lung cancer in men. Just
5 to be precise.
6 Q. Philip Morris could have told the
7 public back in 1964 to rely upon the public health
8 community's messages with regard to cigarette
9 smoking and health, couldn't they have?
10 MR. MC CONNELL: Objection to
11 form.
12 A. I wasn't party to anything Philip Morris
13 did in '64, so I don't know if I'm -- I assume
14 they could, but I hadn't -- was not there and not
15 aware of what was -- what they could or couldn't
16 do.
17 Q. Is there any reason that you're
18 aware of that would have prevented them from doing
19 that?
20 MR. MC CONNELL: Objection. Calls
21 for speculation.
22 Q. That you're aware of?
23 A. I'm not aware of any reason they could
24 have or no reason that they couldn't have. I'm
25 not acquainted with the situation.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Q. Look at the last full paragraph on
2 Exhibit 1, which reads, "Cigarette smoking is
3 addictive, as that term is most commonly used
4 today."
5 Do you see that?
6 A. Yes, sir.
7 Q. Is it fair to say that because
8 that statement is on Philip Morris' web site that
9 that is the position of Philip Morris on that
10 issue?
11 MR. MC CONNELL: Objection to
12 form.
13 A. This has been published by Philip Morris,
14 so I would assume that the company's position is
15 that they agree with the sentence. Yes.
16 Q. When I asked you this morning
17 whether cigarettes are addictive and you told me
18 you didn't know, that was a technical term, were
19 you aware that this was Philip Morris' position?
20 A. I wasn't acquainted with this particular
21 sentence, and I'm not sure that I understand.
22 Q. You don't understand?
23 A. The "most commonly used today," you know,
24 as I said earlier, I do believe that some people
25 have a difficult time quitting smoking, and if
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1 that's what they're referring to I agree with
2 that.
3 Q. Is that what you understand the
4 word "addiction" to mean?
5 A. As I said before, I don't know what the
6 word "addiction" means.
7 Q. But you weren't aware of this
8 particular statement when I asked you that
9 question this morning.
10 MR. MC CONNELL: Asked and
11 answered.
12 A. I didn't recall it when you asked me.
13 Q. Have you ever reviewed or seen the
14 1988 Surgeon General's report?
15 A. I don't recall.
16 Q. Let me represent to you today that
17 the 1988 Surgeon General's report concluded that
18 nicotine in cigarettes is addictive. Okay. Is
19 there any reason that you're aware of that Philip
20 Morris could not have in 1988 come out with the
21 same statement that appeared on their web site
22 today?
23 MR. MC CONNELL: Objection.
24 Speculation.
25 A. Once again, I'm not aware of any reason
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 why they could or couldn't have made such a
2 statement.
3 Q. You joined Philip Morris in 1991.
4 Right?
5 A. That's correct.
6 Q. Is there any reason that you're
7 aware of that Philip Morris could not have
8 communicated to the public in 1991 that cigarettes
9 are addictive?
10 A. I am not aware of any reason why they
11 could or could not have communicated that.
12 Q. What about 1992?
13 A. I'm not aware of whether they could or
14 couldn't have.
15 Q. I'm asking you if there's any
16 reason that you're aware of that they could not
17 have communicated that to the public, and I just
18 want to know if there's any reason that you're
19 aware of that they could not have done that.
20 MR. MC CONNELL: Asked and
21 answered.
22 A. No. I'm not aware of any reason why they
23 could not have communicated that.
24 Q. How about 1993?
25 A. I'm not aware of any reason why they could
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1 not have communicated that.
2 Q. How about 1994?
3 A. Likewise.
4 Q. '95?
5 A. Likewise.
6 Q. '96?
7 A. Likewise.

8 Q. Before we leave Exhibit Number 1
9 let me ask you -- And I think you answered this
10 before, but just so I'm clear on the subject, are
11 you aware of any marketing research that Philip
12 Morris has ever done with regard to their web
13 site?
14 A. No. I am not aware of any marketing
15 research.
16 Q. Just to make sure I'm not using
17 the wrong word, are you aware of any consumer
18 research that Philip Morris may have done prior to
19 the launch of their web site?
20 A. No. I'm not aware of any --
21 Q. Are you aware of any focus groups
22 that Philip Morris may have done prior to
23 launching their web site?
24 A. No, sir.
25 Q. Do you smoke?
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1 A. No, sir.
2 Q. Have you ever smoked?
3 A. I lit a cigarette once or twice in my
4 life.
5 Q. Good for you.
6 Do you have children?
7 A. No, sir.
8 Q. When is the last time you were
9 deposed?
10 A. A little less than two years ago.
11 Q. What case was that? Do you
12 remember?
13 A. It was either Oklahoma or Engle.
14 Q. You said that was in 1998?
15 A. That's correct.
16 MR. MC CONNELL: September 24th,
17 1998.
18 Q. Have you published anything new
19 since 1988?
20 A. No, sir.
21 Q. Have you done any new work since
22 1988 on youth smoking?
23 A. No. I don't do work on youth smoking.
24 Q. Have you started any new research
25 projects at Philip Morris since 1988?
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 MR. MC CONNELL: Object to the
2 form.
3 A. Have I started any new research. Have I
4 personally --
5 Q. In your department?
6 A. Yes.
7 Q. Specifically with respect to
8 marketing?
9 A. That's correct.
10 Q. How many new projects have you
11 started in the last two years at Philip Morris in
12 marketing?
13 A. Can you define what you mean by "project."
14 Q. Sure. I mean it in the broadest

15 sense of the term right now, and we'll get more
16 specific later. What I mean by "project" is any
17 new work or marketing campaigns or anything of the
18 sort that you started in the last two years that
19 were not initiated prior to 1998. I just want a
20 general number right now.

21 A. Because I don't categorize my work in the
22 terms of project that you're talking about, I
23 could categorize at least a half a dozen.

24 Q. Half a dozen?

25 A. Uh-huh.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Can you name them for me?

2 A. Yes. Since 1998 we worked on a new
3 Virginia Slims advertising campaign. We worked on
4 experiential marketing program where we send adult
5 Virginia Slims smokers to a spa.

6 Q. That's separate from the first
7 one?

8 A. Uh-huh.

9 MR. MC CONNELL: Yes.

10 A. Yes. We worked on communicating a new
11 paper technology on Merit that reduces the risk of
12 fire.

13 We worked on whether it's a
14 financially good decision to continue advertising
15 the Benson & Hedges brand. We worked on expanding
16 the Parliament marketing program to parts of
17 geography in the United States where it's not
18 currently being marketed.

19 Q. Is that it?

20 A. You want one more? Okay.

21 Q. Just all that you can remember.

22 A. Worked on a new catalogue for adult
23 Virginia Slims consumers to regain their UPCs, the
24 universal product code that's on their packages,
25 for gifts.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Is that all you can remember that
2 have been initiated since 1998?

3 A. Those are the largest projects. Worked on
4 a direct mail campaign on the Merit business
5 called The Lighter Side, which is mailed to
6 smokers who have signed up with their desire to be
7 on our database and their proof of age that
8 they're 21 years old, worked on a couponing
9 program that sends via direct mail coupons to
10 adult smokers of competitive brands who might be
11 interested in switching from their brand to
12 Parliament, Benson & Hedges, or Virginia Slims or
13 Merit. Those are the key parts that make up my
14 budgets.

15 Q. I don't want to talk about all of
16 these, but there's a few I'm interested in. The
17 first one, the new Slims advertising campaign, can
18 you tell me about that?

19 MR. MC CONNELL: I'll object to
20 the form, but go ahead.

21 A. Can you ask me more specifically what you

22 would like to know about it?
23 Q. Sure. What was the purpose of it?
24 A. The purpose was to evolve and continue to
25 have the Virginia Slims message relevant to the
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 audience of smokers that smoke Virginia Slims,
2 which are adult smokers whose average age is
3 between 38 and 40. And the campaign that had been
4 running in the midnineties was very relevant to
5 these adult female smokers, but, in fact, was
6 beginning to look more like the nineties than the
7 Year 2000, and the situations portrayed and the
8 language used in that were things that were
9 relevant in '95 and '96 when that campaign was
10 developed, and we evolved it to pictures and words
11 that are relevant to adult female smokers in the
12 new millennium.

13 Q. You referenced adult female
14 smokers, I take it, because most of the people
15 that smoke Virginia Slims are females. Correct?

16 A. Will you restate your question for me,
17 please?

18 Q. Sure. In your previous answer you
19 referenced a few times adult female smokers, and I
20 said I take it that's because most of the people
21 who smoke Virginia Slims are females. Correct?

22 A. You're asking me two questions there.
23 You're asking me a because question, and you're
24 asking me who the consumers of Virginia Slims are.

25 Q. Let me ask it this way then:
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Isn't it true most of the smokers of Virginia
2 Slims are female?
3 A. Most of the smokers of Virginia Slims are
4 female.
5 Q. And I take it then that you would
6 want to get your marketing message out to females
7 specifically when you're talking about Virginia
8 Slims. Correct?
9 A. I want to get my Virginia Slims
10 advertising message out to females who are between
11 the ages of 25 and 50 where the predominant number
12 of Virginia Slims smokers are, and those are the
13 female smokers or the smokers who are most likely
14 to switch to Virginia Slims.

15 Q. But female smokers specifically as
16 opposed to male smokers. That's what I'm getting
17 at.

18 A. I do not try to reach male smokers with
19 the Virginia Slims campaign.

20 Q. With that ad campaign you are able
21 to specifically target female smokers, aren't you?

22 A. Would you define "target" for me, please.

23 Q. Sure. You're able to make sure
24 that your message gets specifically to female
25 smokers and that it's tailored to get to female

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 smokers specifically. That's what I mean by
2 target.
3 A. Yes. I design the message that's relevant
4 to those female smokers.
5 Q. Let's talk about for a second the
6 third new project that you discussed, the new
7 paper project for Merit. Can you tell me what the
8 purpose of that project was?
9 A. Yes. The project is called Merit Paper
10 Select, and this product improvement has just been
11 expanded nationally and was in test market in the
12 last year, and it involves a technology of -- on
13 the paper of the cigarette that applies several
14 microscopic extra lines of paper on top of the
15 paper which will increase the likelihood of the
16 cigarette to self-extinguish when it is left. For
17 example, if you were to fall asleep and leave it
18 on your living room couch, the paper technology
19 helps the cigarette to self-extinguish.
20 Q. Is that what I've heard as being
21 referred to as a fire safe cigarette? Would that
22 be a fair characterization of it?
23 A. No, it wouldn't be a fair characterization
24 of it because, in fact, there is no cigarette that
25 is safe, and while it certainly can reduce the
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 likelihood of setting that couch on fire, for
2 example, it cannot guarantee that it will be safe,
3 and I certainly don't want to misrepresent to a
4 consumer that they can leave cigarettes burning
5 all over the place.
6 Q. How about self-extinguishing
7 cigarette, would that be a fair characterization
8 of the cigarette?
9 A. You know, yes, again, it's much more
10 likely to self-extinguish, but I'm not offering a
11 100-percent guarantee.
12 Q. Because you wouldn't want to
13 misrepresent to the consumers that, in fact, it's
14 a safe product.
15 A. That's correct.
16 Q. Are you aware of any research that
17 Philip Morris did on this new paper -- Let me ask
18 it --
19 MR. GRUENLOH: Strike that.
20 Q. What do you call the new Merit
21 cigarette? What is it called?
22 A. It's called Merit Paper Select.
23 Q. Merit Paper Select. How would you
24 characterize that cigarette?
25 A. As a Merit cigarette that's more likely to
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 extinguish when left alone.
2 Q. Are you aware of any research that
3 Philip Morris may have done back in the early
4 eighties with regard to cigarettes which were more
5 likely to extinguish themselves when left alone?
6 A. I don't specifically recall any research
7 in the early eighties. I'm not aware of research

8 in the early eighties.
9 Q. Right now when I say "research"
10 I'm not restricting it to marketing research. I
11 want to know if you know about any research either
12 from the R&D department, the marketing department,
13 whatever.
14 A. I know that this technology has been
15 worked on for over ten years. I don't know how
16 much longer than that.
17 Q. How do you know it's been worked
18 on for over ten years?
19 A. Because I've spoken to people in R&D
20 operations who have worked on it for over ten
21 years and they said so.
22 Q. Why wasn't it put out in the
23 market ten years ago?
24 A. Because until recently it didn't work.
25 Q. How do you know that?
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 A. Because the scientists said so.
2 Q. They told you personally?
3 A. Yes, sir.
4 Q. Who told you?
5 A. Cliff Lilly.
6 Q. When was that cigarette put out in
7 the market? Do you remember the year?
8 A. I'm not sure if the first test market of
9 the product was late in the year of 1999 or 2000.
10 I believe it was during the Year 1999.
11 Q. Cliff Lilly came to you and told
12 you that this technology wasn't available to put
13 out in the market, wasn't ready to put out in the
14 market until 1999. That's what he told you?
15 A. He didn't say that specifically, but he
16 has been working on making it so it would work,
17 and the soonest that we had the product research
18 to say that this was an acceptable product to put
19 out in the marketplace we opened up the test
20 market.
21 Q. But what I'm trying to determine
22 is whether he told you that specifically or you're
23 just assuming that because it wasn't put out until
24 1999?
25 A. My staff and I waited for the final
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 results of their final technical qualification in
2 order for us to start the test market.
3 Q. So they sent you a report giving
4 you the green light?
5 A. That's correct.
6 They didn't send a report. They
7 made a telephone call.
8 Q. Did you ever inquire of Mr. Lilly,
9 Dr. Lilly, whether that cigarette could have been
10 marketed prior to 1999?
11 A. I didn't ask him that specific question.
12 Q. What's his position, by the way,
13 Dr. Lilly?
14 A. I don't know his job title.

15 Q. But he's in R&D?
16 A. Yes.
17 Q. Let's talk about the next project
18 that you named. The issue is whether or not to
19 continue the marketing of Benson & Hedges. Can
20 you tell me why you thought that project was
21 necessary?
22 A. Yes. One of my major responsibilities is
23 allocating the resources across the businesses
24 that I'm responsible for, and in a declining
25 market, which the cigarette industry is, I have

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 fewer financial resources as well as fewer human
2 resources in terms of our sales force, that I have
3 to choose how I allocate those across my
4 businesses, and as I analyze the business of each
5 of the brands that I'm responsible for and I was
6 choosing how to spend my marketing resources, my
7 budgets, the analysis said that I could get a
8 better return for my shareholders by focusing my
9 resources on Virginia Slims, Merit, and Parliament
10 and no longer advertising and spending the money
11 on the Benson & Hedges business.

12 Q. Are you familiar with the
13 additives that go into Philip Morris brands?

14 A. No, sir.

15 Q. Are you aware that for many of the
16 brands, including Benson & Hedges and Marlboro,
17 Philip Morris has intentionally laced the
18 cigarettes with sugars and other sweeteners?

19 MR. MC CONNELL: Objection to
20 form.

21 Q. Are you aware of that?

22 A. I'm not a chemist.

23 Q. That's not the question I asked
24 you.

25 A. I'm not acquainted with the terms you're

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 using.

2 Q. Which terms are you having --

3 A. I don't know what "lacing" means.

4 Q. Well, are you aware that Philip
5 Morris has intentionally added sugars and other
6 sweeteners to many of their brands, including
7 Benson & Hedges and Marlboros?

8 A. Yes. I believe sugar is one of the
9 flavorings used in cigarettes.

10 Q. And there's other sweeteners that
11 are intentionally added to cigarettes, aren't
12 there?

13 A. I don't know.

14 Q. You don't know? Have you ever
15 heard that?

16 A. I've never heard that.

17 Q. Do you know why they put sugars in
18 their cigarettes?

19 A. The sugars in the cigarettes are flavor,
20 and flavor is making it a good-tasting product.

21 Q. To make them sweeter?

22 A. I don't know if it's sweeter. I know that
23 it's a flavor, and since sugar is sweet I think
24 that's a good assumption to make.

25 Q. Are you aware of any consumer
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 research that Philip Morris has ever done on that
2 subject?

3 A. On which subject?

4 Q. The subject of putting sugar in
5 their cigarettes.

6 A. No. I'm not aware of that.

7 Q. Let's go to the next project.
8 Expanding Parliament marketing. Can you tell me
9 what the purpose of that was?

10 MR. MC CONNELL: Before you
11 answer, I want to caution you to the extent you're
12 getting into what you think is proprietary
13 information, maybe you can mention that. Maybe
14 there's some way we can handle that. We do have a
15 B & W lawyer listening to this deposition. If
16 you're getting into something you consider kind of
17 sensitive why don't you tell us that, and we can
18 handle that by designating it or sealing it or
19 something.

20 Q. Before you answer, let me ask you,
21 what is it that you think would be confidential or
22 proprietary; the marketing strategies? Is that
23 what you're worried about here?

24 A. Yes.

25 Q. To the best you're able without
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1 disclosing any proprietary information, tell me
2 what the purpose of expanding the Parliament
3 marketing project was.

4 A. In 1998 Parliament was marketed with
5 advertising promotion in the Northeast in New
6 York, Massachusetts, Vermont, New Hampshire,
7 Maine, and Florida and -- and I'm not sure
8 exactly -- You asked me since September of '98,
9 and I may be moving back a little earlier in '98,
10 but we have subsequently begun marketing the
11 Parliament product in Chicago and Wisconsin and
12 Minnesota because we had -- Once again, I was
13 talking about allocating my resources and -- and
14 Parliament was a brand that was a brand that was
15 exhibiting growth in building its share of market
16 in the Northeast, and it made sense to allocate
17 resources and see if we could, in fact, not grow
18 Parliament's share of the market in the Midwest.

19 Q. Let me just ask you about the last
20 new project that you mentioned. Then we'll move
21 on. It was the mailing of coupons to adults. Can
22 you tell me the purpose of that project?

23 A. Yes. Offer the consumers, adult smokers
24 who choose to sign up on our database -- If they
25 sign up for our database they sign up with their

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1 name and address and their cigarette preferences
2 and their date of birth showing they're over 21
3 years of age and that they verify that they want
4 to receive coupons and offers from cigarette
5 brands. So when they have asked us, Yes, I want
6 to participate in this we then have the
7 opportunity and take the opportunity to send them
8 coupons that provide them an incentive to choose
9 to buy a pack of Virginia Slims or a pack of Merit
10 instead of a competitive brand from Reynolds or
11 Brown & Williamson or one of our other
12 competitors.

13 Q. Aside from them filling in their
14 date of birth did Philip Morris do anything else
15 to verify that these people are, in fact, over the
16 age of 21?

17 A. Yes, we do. In the last year or two we
18 have been requesting that consumers certify that
19 they are -- the information they previously
20 provided us is accurate by sending in a copy of
21 their government ID, and most states that's a
22 driver's license. In some states there are laws
23 that say you can't Xerox your driver's license, so
24 we ask them for some sort of government ID.

25 Q. You started doing that a couple
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 years ago?

2 A. Yes.

3 Q. Why didn't you do it before then?

4 A. Because we felt that it was a -- an extra
5 added measure of caution to request validation of
6 it, so that, in fact, people who were
7 misrepresenting their information, we're providing
8 that much more assurance for ourselves that these
9 people aren't misrepresenting that information.

10 Q. You could have done that at any
11 time, couldn't you?

12 MR. MC CONNELL: Objection to
13 form.

14 A. Yes, sir.

15 Q. There's nothing that prevented you
16 from doing that, is there?

17 MR. MC CONNELL: Same objection.

18 A. There was nothing that prevented us from
19 doing that.

20 (Whereupon, Exhibit 2 is marked
21 for identification by the reporter.)

22 Q. You've been handed Exhibit Number
23 2 to the deposition, which is the notice of your
24 deposition in this case. Have you seen that
25 document?

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1 A. I have not seen this specific document.

2 Q. Can you please turn to the last
3 page of Exhibit Number 2, entitled Schedule of
4 Documents. Have you seen that document?

5 A. No. I've not seen this document.

6 Q. I take it then you haven't made
7 any effort to bring with you any of the documents

8 that have been requested in that document?
9 MR. MC CONNELL: You've already
10 got the updated CV.
11 A. I believe you have the updated CV. I have
12 not published anything in the last ten years. I
13 don't have a file on this case. I haven't relied
14 on any articles, books, et cetera.
15 Q. I'm sorry. Let's stop on that
16 one.
17 Your testimony is you haven't
18 relied upon any books, reports, articles,
19 pamphlets, or other materials for your opinion in
20 this case?
21 A. I may not have understood the second part
22 of that sentence. You know, I relied on the same
23 materials that were supplied in the Oklahoma case.
24 Q. Have you brought those materials
25 with you to the deposition?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. No, sir.
2 Q. Have you brought a list of those
3 materials with you to the deposition?
4 A. No, sir.
5 MR. MC CONNELL: I just state on
6 the record your firm has those materials. You got
7 them in September of 1998 in the course of the
8 Oklahoma deposition. Miss LeVan was interrogated
9 extensively about these materials.
10 MR. GRUENLOH: But this is a
11 different case, and I'm entitled to ask questions
12 about the witness' reliance materials in this
13 case. I certainly wasn't put on notice that those
14 were the same reliance materials in this case.
15 MR. MC CONNELL: I'll just tell
16 you I just received this yesterday, and I'm
17 telling you now it's the same witness, the same
18 subject matter, same disclosure, and it's the same
19 materials.
20 MR. GRUENLOH: That does me little
21 good today, though, you understand.
22 Q. Before we leave Number 3, you
23 haven't brought with you to the deposition
24 anything which would be responsive to Request
25 Number 3. Correct?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. No, sir.
2 Q. Let's look at Request Number 4
3 which reads "Any and all depositions, medical
4 records, bills, receipts, hospitalization records,
5 test results, lab results, population data or
6 other documents in your possession relating to the
7 class representatives or any potential class
8 member of this case."
9 Let me ask you, have you reviewed
10 any of the medical records of the class members in
11 this case?
12 A. No, sir.
13 Q. Have you reviewed any of the
14 records of the class members in this case?

15 A. No, sir.
16 Q. Have you reviewed any information
17 specific to West Virginia?
18 A. No, sir.
19 Q. I can't recall. On your updated
20 CV is there an updated list of cases in which
21 you've testified or given depositions?
22 A. It's not on the CV.
23 Q. Do you have such a list or could
24 you provide such a list?
25 A. Engle and Oklahoma.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. That's it?
2 A. Yes, sir.
3 Q. Those are the only two cases in
4 which you've given a deposition or provided trial
5 testimony?
6 A. Yes, sir.
7 Q. Did you appear at trial in -- You
8 already told me you didn't appear at trial in
9 Engle, and Oklahoma didn't go to trial.
10 Q. How much time have you spent
11 working on this case, the Blankenship case?
12 A. About five or six hours yesterday.
13 Q. Tell me what you did yesterday to
14 work on the case.
15 A. I met with Mr. McConnell and Mr. Bell and
16 Mr. Howard, and they talked to me about what the
17 case was about and talked about what issues might
18 be discussed and talked about what I had, in fact,
19 talked about in the previous Oklahoma deposition
20 that your firm handled.
21 Q. Prior to that five-hour meeting
22 had you done any work whatsoever on the
23 Blankenship case?
24 A. No, sir.
25 Q. Have you reviewed the complaint in
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 this case?
2 A. No, sir.
3 Q. Tell me what your understanding of
4 this case is.
5 A. I understand that it is a case about
6 everyone in West Virginia who was smoking at some
7 date in the nineties, I believe '95, who are not
8 ill but who are requesting -- And I know I'm not
9 using the right legal terms, but requesting
10 compensation to have their health monitored into
11 the future.
12 Q. Are you aware of any marketing
13 research that Philip Morris may have done
14 specifically with regard to West Virginia?
15 A. No, I'm not.
16 Q. What's the population of West
17 Virginia?
18 A. I have no idea.
19 Q. Do you know what the prevalence of
20 smoking is in West Virginia?
21 A. No. I do not.

22 Q. Are you aware of any
23 characteristics of the West Virginia population
24 that would make them different in general as the
25 US population on the whole?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. No, I'm not.

2 Q. Do you intend on testifying at
3 trial in this case?

4 A. Yes, sir.

5 Q. Tell me generally the subjects
6 which you intend to testify at trial on.

7 A. Those would be the subjects in my expert
8 report that are about the marketing of Philip
9 Morris products and --

10 Q. Let's do it this way.

11 MR. GRUENLOH: Mark this as
12 Exhibit Number 3 to the deposition.

13 (Whereupon, Exhibit 3 is marked
14 for identification by the reporter.)

15 Q. You've been handed what's been
16 marked Exhibit Number 3 to the deposition. Have
17 you ever seen that before?

18 A. Yes, I have.

19 Q. Is it your disclosure in this
20 case?

21 A. Excuse me?

22 Q. Is it your disclosure in this
23 case?

24 A. I'm not acquainted with the word --

25 Q. Is it your report in this case?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. Yes.

2 Q. Did you write it?

3 A. I worked with counsel, and we wrote it
4 together.

5 Q. When did you do that?

6 A. This is very similar to what was presented
7 in the other cases that I gave depositions in, so
8 it was done several years ago, and then upon this
9 case I read it and looked for any things that were
10 changes over time, so it was done more than a
11 couple years ago originally and then revised
12 accordingly.

13 Q. Is it very similar to the reports
14 that you gave in those other cases, or is it
15 identical?

16 A. I think it is very similar.

17 Q. So there are some changes.

18 A. Yes.

19 Q. Can you point out the changes for
20 me?

21 A. I'm not sure that I'll be able to recall
22 the specific changes because, in fact, there have
23 been several of them. I don't have the other
24 pieces of paper to relate it from, and the changes
25 were not substantial. They were more grammatical

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 and how do you spell Procter & Gamble, which is
2 spelled wrong in here, so there were no
3 substantial changes versus the previous.
4 Q. But you testified that there were
5 some changes. And you communicated those to
6 counsel.
7 A. That's correct.
8 Q. When did you do that?
9 A. When they sent this over to me a couple
10 weeks ago.
11 Q. So they sent the report over to
12 you. You reviewed it.
13 A. That's correct.
14 Q. And then you sent it back to them
15 with a couple changes.
16 A. That's right. In this version.
17 You know, earlier I had spent more
18 time when it was used in the other cases.
19 Q. Did you fax it over to them?
20 A. No. It was handcarried by someone who
21 works for Dechert that I don't know who they were.
22 I don't know their name.
23 Q. So you just wrote notes on the
24 copy that they had sent you, and then you had it
25 hand-delivered back to them.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. The gentleman stood there while I changed
2 two or three words, and I handed it back to him.
3 Q. You no longer have a copy of that?
4 A. No. I handed it back to him.
5 Q. I notice on the back of your
6 report you didn't sign it, did you?
7 A. I signed the piece of paper that the
8 gentleman gave me and, in fact, the one I
9 corrected the typos, another person then brought
10 to the office and that's what I signed.
11 Q. The copy that was given to
12 plaintiffs' counsel, there's no signature on it.
13 But you're testifying you did, in fact, sign a
14 copy of a report?
15 A. Yes, sir.
16 Q. Have you adopted all of the
17 opinions that are listed in Exhibit Number 3 as
18 your own?
19 A. Yes. I helped to formulate them.
20 Q. Just so I'm clear before we leave
21 this subject, are there any other drafts of this
22 report that you're aware of that are in existence?
23 A. There were reports similar to this created
24 for Engle and for Oklahoma, so I assume both
25 exist.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Aside from those two are there any
2 other drafts of this report that you're aware of?
3 A. Not that I'm aware of.
4 Q. There's not a handwritten version
5 of this?
6 A. Not that I'm aware of.
7 Q. Does this disclosure fairly

8 represent the opinions you intend to offer at
9 trial in this case?
10 A. Yes, sir.
11 Q. We'll get back to the report in
12 just a second.
13 You're still vice president of
14 premium brands at Philip Morris. Correct?
15 A. That's correct.
16 Q. Can you tell me what your job
17 responsibilities and duties are?
18 A. Yes. My responsibility is to manage the
19 marketing of the premium brand category at Philip
20 Morris, which includes brands including Virginia
21 Slims, Merit, Parliament, and Benson & Hedges.
22 Q. Virginia Slims, Merit, Parliament,
23 and Benson & Hedges. Are those the ones you
24 listed?
25 A. Yes, sir.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Q. Are you generally aware of the
2 marketing efforts for the other brands at Philip
3 Morris as well?
4 A. Yes, sir.
5 Q. Can you give me a list of the
6 Philip Morris brands of cigarettes for which you
7 are generally aware of the marketing efforts?
8 A. In addition to those brands I'm acquainted
9 with the marketing efforts of Marlboro, of Basic,
10 of Cambridge. Those are the brands that we market
11 nationally.
12 Q. Who do you report to?
13 A. I report to Nancy Lund, senior vice
14 president of marketing. L-U-N-D.
15 Q. Tell me what the chain of command
16 is on up to a gentleman whose name I can't
17 pronounce.
18 A. Nancy reports to Mike Szymanczyk.
19 (Recess.)
20 Q. Ms. LeVan, you don't claim to be
21 an expert in consumer perception or awareness, do
22 you?
23 A. No. That's a big general term there.
24 Q. You haven't published anything on
25 consumer perception and awareness, have you?
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 A. No. I've not published anything.
2 Q. Have you taken any courses or
3 gotten any formal education in consumer perception
4 and awareness?
5 A. I've not taken any courses on consumer
6 perception and awareness, no.
7 Q. Can you tell me in what decade the
8 first peer-reviewed articles regarding consumer
9 perception or consumer behavior was published?
10 A. I don't know what you're referring to.
11 Q. So you can't tell me in which
12 decade the first article regarding consumer
13 behavior was published?
14 A. I don't know what the article you're

15 talking about is, and I don't know when it was
16 published.
17 Q. Can you name for me just one
18 article regarding consumer behavior as we sit here
19 today?
20 A. No.
21 Q. Do you subscribe to any
22 advertising or marketing journals?
23 A. I don't subscribe to any journals. I
24 subscribe to trade magazines that talk about
25 advertising and marketing.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Q. Which ones are those?
2 A. Advertising Age and Brand Week.
3 Q. Any others?
4 A. No, sir.
5 Q. Can you give me an example of a
6 well-known marketing theory?
7 MR. MC CONNELL: Objection to
8 form.
9 A. I don't use the term "marketing theory,"
10 so I don't -- I don't -- That's nomenclature that
11 I'm not used to, so I don't.
12 Q. Can you summarize any of the major
13 theories of buyer behavior?
14 MR. MC CONNELL: Objection to
15 form.
16 A. Repeat your question.
17 Q. Can you summarize any of the
18 theories of buyer behavior?
19 A. It sounds like you're asking for something
20 specific in terms of a theory, so, no, I can't.
21 Q. I'm not asking for any specific
22 one. I'm asking for any of them.
23 A. Once again, your nomenclature of "theory"
24 is one that is not part of my working vocabulary
25 in terms of a thing. I don't have a list of
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 theories.
2 Q. You've never heard of a theory of
3 buyer behavior?
4 A. I don't recall that set of words.
5 Q. What are the four basic elements
6 of marketing that are known in the industry as the
7 marketing mix?
8 A. The marketing mix includes product, the
9 product attributes that you brought up. It
10 includes price, the price at which the product is
11 sold for. It includes promotion, the incentives
12 that are provided to the consumer to buy that
13 product, and it includes communication, the
14 message or the positioning of what that brand
15 stands for.
16 Q. Is it --
17 A. There are lots of other academic schools
18 of marketing that would also say that there are
19 not four but five, and the other one is
20 distribution, as to where this product and how the
21 product is available for the consumer to buy it.

22 Q. Is it your testimony today that
23 those five elements are the elements that are
24 known as the marketing mix?
25 A. Known to whom?
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Known to the marketing community.
2 A. They're what I know of as the marketing
3 mix.
4 Q. Can you name any of the
5 traditional models that have been developed to
6 depict the stages that a consumer might pass
7 through in moving from a state of not being aware
8 of a product to a state of actually buying the
9 product?
10 A. No. I can't name any models.
11 Q. What are the names that the people
12 in the marketing industry would use to describe
13 the three different market segment strategies that
14 companies in the United States are using to market
15 their products?
16 A. Repeat that?
17 Q. What are the names that people in
18 the marketing industry would use to describe the
19 three different market segment strategies that
20 companies in the United States are using to market
21 their products?
22 A. I don't know what you're talking about.
23 Q. You don't know what the three
24 different market segment strategies the companies
25 in the United States use to market their products
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 are?
2 A. No, sir. That's a line that I'm not -- a
3 reference that I'm acquainted with.
4 Q. Do you know how an
5 undifferentiated strategy differs from a
6 differentiated strategy or a concentrated
7 strategy?
8 A. I'm not acquainted with the term
9 "concentrated." I understand what the words
10 "undifferentiated" and "differentiated" means,
11 which would suggest to me that one is selling the
12 same thing everybody else is and one is selling
13 things that are different.
14 Q. Are you guessing, or do you know
15 what those terms --
16 A. I'm deriving -- Those terms are not terms
17 that I use in the course of doing business.
18 Q. Do you know what any of the three
19 major market indices are that are used in the
20 media planning process?
21 A. I believe there are far more than three
22 indices used in marketing planning.
23 Q. Can you name some of them for me?
24 A. Yes. You measure reach, which is how many
25 consumers your advertising is reaching. You
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1 measure frequency, which is how many times each of
2 those consumers is reached, and you measure cost
3 per -- Usually it's in terms of -- We call it a
4 CPM or cost per thousand, or if it happens to
5 be -- Then there are different measurements for
6 different kinds of media, so there are lots of
7 indices used.

8 Q. Let's go back to Exhibit Number 3,
9 which is your report, and I want you to look at --
10 Do you have that in front of you?

11 A. Yes.

12 Q. I want you to look at the second
13 paragraph, the sentence that reads, "She is also
14 expected to testify concerning the size,
15 structure, and goals of Philip Morris' marketing
16 and sales functions, the size of use of Philip
17 Morris' marketing budgets, and the distribution
18 channels in which Philip Morris sells cigarettes
19 in the United States."

20 Do you see that?

21 A. Yes, sir.

22 Q. Tell me what -- Let's do it this
23 way: Let's start from 1991 when you joined the
24 company, and I want to know from 1991 to today
25 year by year what the marketing budget overall of

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1 Philip Morris was. Let's start with 1991.

2 A. I can't recall what the budget was in
3 1991.

4 Q. What about for the four products
5 for which you're primarily responsible for;
6 Virginia Slims, Merit, Parliament, Benson &
7 Hedges, can you tell me what the marketing budget
8 was in 1991 for any one of those four?

9 A. I can't tell you specifically what the
10 budget was in 1991.

11 Q. How about in 1992?

12 A. I don't have specific recollection of '92.

13 Q. Do you have specific recollection
14 of any year?

15 A. Yes.

16 Q. What year?

17 A. The budget for the brands that I'm
18 responsible for last year was about \$400 million.

19 Q. For Virginia Slims, Merit,
20 Parliament, and Benson & Hedges?

21 A. That's correct.

22 Q. That's for the United States only?

23 A. That's correct.

24 Q. Do you know what the overall
25 budget was for Philip Morris' marketing domestic?

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1 A. It was about \$2 billion.

2 Q. Can you recall the marketing
3 budget for any other year aside from last year?

4 A. Not with specificity, but it was in the
5 same range.

6 Q. Is there a trend? Is it going up
7 or going down?

8 A. It varies year by year, but it has gone
9 down in '99 and 2000 compared to '98 when it was
10 closer to 500 million.
11 Q. How does the marketing budget for
12 Virginia Slims, Merit, Parliament, and Benson &
13 Hedges of last year compare with the marketing
14 budget for those four brands in 1991?
15 A. I don't have enough specific recall in '91
16 to make that comparison.
17 Q. You don't know whether it's lower
18 or higher?
19 A. No.
20 Q. Let me ask you the same question
21 with respect to the Philip Morris' domestic
22 marketing budget overall. Do you know if it was
23 higher or lower in 1991 than it is today?
24 A. It would be higher than it was in 1991.
25 Q. Today's budget is higher than it

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1 was in 1991?
2 A. Today's total marketing budget, including
3 both our advertising budget as well as our
4 promotion and price reduction budget, would be
5 higher than it was in 1991.
6 Q. Any idea about how much?
7 A. No.
8 Q. Let's look at Exhibit Number 3
9 again and the sentence directly before the
10 sentence I just read, which reads, "She is
11 familiar with Philip Morris' marketing efforts
12 past and present for all of Philip Morris' major
13 domestic brands."
14 A. Yes, sir.
15 Q. Have I read that correctly?
16 A. Yes, sir.
17 Q. Is that true as we sit here today
18 that you're familiar with all of the marketing
19 efforts of Philip Morris, past and present?
20 A. Well, I'm familiar with Philip Morris'
21 marketing efforts, and you added a word called
22 "all," and I don't purport to know everything,
23 every detail of everything that Philip Morris has
24 ever done.
25 Q. Is it true as we sit here today

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1 that you're familiar with Philip Morris' marketing
2 efforts past and present for all of their major
3 domestic brands?
4 A. Yes.
5 Q. But you agree that you have no
6 specific knowledge of the intent of Philip Morris'
7 marketing prior to 1991, don't you?
8 A. I do not know the individual intent of
9 things that were done that I wasn't there for.
10 That's correct.
11 Q. Who is in charge of marketing
12 overall for Philip Morris brands prior to 1991?
13 Do you know?
14 A. There were lots of people.

15 Q. Who was the CEO of Philip Morris
16 in 1991?
17 A. The CEO was William Campbell.
18 Q. Do you profess to know the intent
19 of Mr. Campbell's strategies and opinions with
20 regard to marketing?
21 A. Repeat your question, please.
22 Q. Do you profess to know the intent
23 of Mr. Campbell's opinions and strategies in
24 marketing?
25 A. I don't know that I could know anyone's
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 intent. I know what Mr. Campbell spoke about, the
2 marketing strategies. I know what he told me.
3 Q. I want to ask you about Philip
4 Morris' past marketing efforts.
5 Has Philip Morris ever marketed
6 its products to children? And by "children" I
7 mean people under the age of 18.
8 A. I believe that all of Philip Morris'
9 marketing activities have been intended to be
10 directed to adults over the age of 18.
11 Q. I'm not sure that you answered my
12 question. I wasn't asking about the intent, and I
13 thought we just went through the intent. I
14 thought you just told me that you couldn't testify
15 about the past intent of Philip Morris' marketing
16 strategies. Isn't that correct?
17 MR. MC CONNELL: Objection.
18 A. I believe you were asking me the intent of
19 individuals.
20 Q. Let's not get back into that. Let
21 me just ask you my question again.
22 Has Philip Morris ever done --
23 ever marketed its products to children? And by
24 that I mean people under the age of 18.
25 MR. MC CONNELL: Asked and
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1 answered.
2 A. Philip Morris has always directed all of
3 their marketing effort to adults and not to
4 children.
5 Q. It's your opinion that they've
6 never targeted people under the age of 18 in their
7 marketing effort?
8 A. It is my opinion that they have never
9 targeted children.
10 Q. People under the age of 18.
11 That's how I define children.
12 A. I'm not aware in the USA that Philip
13 Morris has targeted anyone under the age of 18.
14 Q. Why have you qualified that with
15 "USA"? Are there different marketing strategies
16 overseas than there are in the USA?
17 A. I'm not an expert on the marketing
18 strategies overseas, but I am aware that different
19 cultures define children differently than you're
20 defining it as Age 18, so I wouldn't want to make
21 a statement on something that I am not sure of.

22 Q. Have you done any search, either
23 Philip Morris databases, archives, or anything of
24 the sort, files where past documents are kept, to
25 determine whether there are any documents that

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1 indicate that Philip Morris may have marketed --
2 targeted children?

3 A. I have not done a search specifically for
4 that question. However, I have been exposed to
5 many, many Philip Morris historic documents both
6 in my participation in the classification of
7 confidentiality of documents as well as my
8 understanding of my businesses. I've reviewed
9 many, many historical documents, and I have never
10 found a single document that suggested or stated
11 that Philip Morris has ever marketed its products
12 to children.

13 Q. But you've never done a search
14 yourself.

15 A. Can you define what you mean by "search."

16 Q. I mean going into the files and
17 checking to find out.

18 A. Well, as I say, I reviewed hundreds and
19 maybe even thousands of documents, and I have
20 found no evidence that Philip Morris has ever
21 marketed their product to children.

22 Q. Let's talk about those thousands
23 of documents that you reviewed. Who gave you
24 those documents?

25 A. From several sources. Some of the sources

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1 are the files that were in my office when I joined
2 the company and the files that were in the offices
3 of brand managers of businesses that I manage.

4 Q. Let's stop there for a second.
5 Did you go into those files yourself and pull
6 them?

7 A. Yes.

8 Q. So you did do a search. I thought
9 you told me that you had not?

10 A. I asked you to define "search." If that's
11 what you're defining as a search, yes. I have
12 pulled documents out of Virginia Slims drawers
13 that, in fact, show the historical marketing
14 activities of the brands.

15 Q. Just Virginia Slims or all the
16 brands?

17 A. No. Of all the brands.

18 Q. Was that a systematic search? How
19 far back in time did you go? How many files did
20 you look at? Did you look at all of them?

21 MR. MC CONNELL: Objection.

22 Compound.

23 You can answer.

24 A. I don't know what "all of them" means.

25 Can you clarify the question, please.

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1 Q. Was it a systematic search. Did
2 you look at all of them?
3 A. I still don't understand the question.
4 Q. Let me ask you first, was it a
5 systematic search or did you just pull out things
6 out of the middle of a file?
7 A. I don't know what a "systematic search"
8 would be.
9 Q. You don't know what "systematic"
10 means?
11 A. Not in the way that you're using it. No.
12 Q. Starting at File Number 1 and
13 going through all of them to make sure that you've
14 seen all of the documents. Did you do that?
15 A. All of what documents?
16 Q. All of the documents that Philip
17 Morris has on marketing.
18 A. No. I have not reviewed every document
19 that Philip Morris has on marketing.
20 Q. Let's go back to your previous
21 answer. You were telling me the sources of where
22 you got the documents from. Continue.
23 A. I got them from the offices of the
24 marketing people at Philip Morris, and I also have
25 participated in reviewing documents in the
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1 archives that are now located in the Minnesota
2 depository.
3 Q. Did you ever make a request of any
4 of the lawyers representing Philip Morris of any
5 documents which might show or tend to show that
6 Philip Morris targeted children?
7 A. No. I don't believe so.
8 Q. Has Philip Morris ever done
9 research to determine what effect, if any, their
10 marketing efforts have had upon children?
11 A. I'm not aware of any.
12 Q. By the way, is it appropriate to
13 market cigarettes to people under the age of 18?
14 A. Absolutely not.
15 Q. Does Philip Morris do that now?
16 A. No. They do not.
17 Q. How do you know that?
18 A. Because I am responsible for and aware of
19 all of the marketing efforts that Philip Morris
20 does, and I am aware that we are not doing any
21 marketing effort targeted to youth, and I'm also
22 aware of an adhered-to policies and procedures
23 that we use as work rules to help insure that we
24 are targeting our marketing efforts only to
25 adults.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Q. Are you familiar with Philip
2 Morris' new mission statement?
3 A. Yes.
4 (Whereupon, Exhibit 4 is marked
5 for identification by the reporter.)
6 Q. You've been handed what's been
7 marked Exhibit 4 to the deposition. At the top it

8 says, "We are more than 13,000 people working
9 across the United States in five US territories
10 with one overriding mission: to be the most
11 responsible, effective, and respected developer,
12 manufacturer, and marketer of consumer products
13 made for adults. Our core business is
14 manufacturing best quality tobacco products
15 available to adults who choose to use them."

16 Is that Philip Morris' new mission
17 statement?

18 A. That's Philip Morris USA's mission
19 statement.

20 Q. Incidentally, I'll represent to
21 you that Exhibit 4 is a printout of Philip Morris
22 USA's web page.

23 Who authored or set out that new
24 mission statement for Philip Morris?

25 A. This mission statement was written by Mike
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Szymanczyk, the CEO, with input from people that
2 he works with.

3 Q. Have you ever discussed the new
4 mission statement with Mr. Szymanczyk?

5 A. Yes, I have.

6 Q. Tell me when you discussed it with
7 him.

8 A. I was at a meeting with him roughly four
9 months ago where the subject of the meeting was
10 leadership development, and the subject of the
11 discussion was the mission statement.

12 Q. Prior to that meeting four months
13 ago had you any conversations with Mr. Szymanczyk
14 regarding the mission statement?

15 A. I had been in meetings where
16 Mr. Szymanczyk talked about the mission statement
17 prior to that, but I didn't have -- I don't
18 believe I had a dialogue with him about it.

19 Q. When was the first time that you
20 became aware of this new mission statement?

21 A. I don't recall.

22 Q. Sometime in '99?

23 A. I don't recall.

24 Q. You have no recollection
25 whatsoever?

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1 A. No.

2 Q. Have you ever discussed the new
3 mission statement at Philip Morris with Ellen
4 Merlo?

5 A. Ellen was in the same meeting that I was
6 referring to about four months ago that I
7 mentioned discussing it with Mike.

8 Q. Have you discussed the mission
9 statement with people that worked for you?

10 A. Yes, I have.

11 Q. Tell me when you first did that.

12 A. I don't know when I first did it. I know
13 that the first discussion would have been the
14 first time I was exposed to it in a -- It would

15 have been when I was first exposed to it.
16 Q. You told me a second ago it was
17 about four months ago Mr. Szymanczyk had a meeting
18 with you specifically on a mission statement. Was
19 it sometime after that that you discussed the
20 mission statement with your employees?
21 A. No. It would have been prior to that. I
22 had lots of exposure to the mission statement
23 prior to this conversation that I had with
24 Mr. Szymanczyk four months ago.
25 Q. Tell me what the substance was of
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 the communications that you had with your staff
2 regarding the mission statement.
3 A. The substance was that this is a -- I
4 believe a very solid articulation of what I as a
5 manager at Philip Morris do and have done and
6 intend to continue doing and what I believe that
7 should be the mission of each and every employee
8 and that these words do a very good job of
9 representing what my department who markets these
10 brands do each and every day.
11 Q. Aside from the meeting you had
12 with Mr. Szymanczyk four months ago are there any
13 other meetings or substantial conversations that
14 you had with him regarding the mission statement?
15 A. Regarding the statement as the topic of a
16 conversation, no. However, the words of the
17 mission are part of most every dialogue we have.
18 We -- In fact, as part of our culture we work to
19 insure that all of our behavior is, in fact,
20 leading to being responsible, effective, and
21 respected.
22 Q. Is that part of your new culture
23 at Philip Morris?
24 MR. MC CONNELL: Objection to
25 form.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 You can answer.
2 A. Those are behaviors I have seen since the
3 day I joined the company.
4 Q. Isn't that how Mr. Szymanczyk
5 described it in his testimony in Engle, as part of
6 the new culture?
7 A. I'm not that acquainted with his Engle
8 testimony.
9 Q. Let's look at the core values --
10 Before we leave the mission statement itself, was
11 there a mission statement, an old mission
12 statement that was in place at Philip Morris prior
13 to the one that's on Exhibit 4 being instituted?
14 A. I don't recall a mission statement being
15 talked about in -- and expressed in these terms,
16 no.
17 Q. So this is the first one you can
18 remember. Right?
19 A. Yes.
20 Q. If you look on Exhibit 4, it lists
21 five core values. Do you see those?

22 A. Yes.
23 Q. Did you attend any training with
24 respect to those five core values?
25 A. Yes.
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1 Q. Tell me what training you
2 attended.
3 A. These values are part of our performance
4 evaluation criteria, and in the context of
5 training on how to evaluate our performance of our
6 employees and the systems in which we evaluate
7 employees these five values are included in those
8 discussions.
9 Q. Have you attended any internal
10 training seminars or anything like that where
11 these five core values were put up on the board
12 and you discussed those core values?
13 A. I can't recall that specifically, but that
14 is the sort of thing that would have been included
15 in the training that I referred to.
16 Q. I don't remember you referring to
17 any specific training. Maybe I missed that in
18 your response. Can you tell me what specific
19 training you're referring to, whether seminars,
20 courses?
21 A. There was training on how to evaluate
22 performance.
23 Q. And when did that training take
24 place?
25 A. More than a year ago. Either in '97 or

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1 '98.
2 Q. Had these core values been
3 expressed and enumerated in 1997?
4 A. I don't know when they were enumerated,
5 but they were enumerated prior to the mission
6 statement. They are not part of the -- They're
7 included as it is presented here, but the core
8 values are part of our performance criteria, and
9 they existed before the mission statement existed.
10 Q. You can't tell me when they came
11 into effect?
12 A. No, I can't.
13 Q. Do you know who the author of
14 these core values was?
15 A. I believe they were -- It was a joint
16 collaboration effort of what we refer to as the
17 senior management team, the senior vice presidents
18 of all the functions and Mr. Szymanczyk.
19 Q. And you think that was sometime in
20 1997?
21 A. As I said before, I'm not sure when they
22 were written.
23 Q. Were they written prior to you
24 coming on board in 1991?
25 A. No.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. You just don't remember
2 specifically when between 1991 and 1997 or so they
3 were written.
4 A. That's correct.
5 Q. Have there been any changes in
6 your marketing practices that you can tell since
7 Mr. Szymanczyk has become the CEO of Philip
8 Morris?
9 A. Yes.
10 Q. Explain those for me.
11 A. Well, there were -- There have been
12 significant changes made as a result of the master
13 settlement agreement that Philip Morris signed
14 with the Attorney Generals. Those include the
15 elimination of out-of-home advertising. They
16 include the elimination of most sponsorships with
17 the exception of one sponsorship per company as
18 detailed in the master settlement agreement.
19 Those are two of the key provisions of the MSA
20 agreement. They also include the elimination of
21 tobacco-branded items being given to consumers.
22 I believe that the master
23 settlement agreement included some statements
24 about sampling. However, Philip Morris as a
25 company policy had previously eliminated product
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1 sampling, so it wasn't a -- It wasn't a change in
2 our policy. However, it was, in fact, restated in
3 the master settlement agreement.
4 Q. First three items that you
5 discussed which were eliminated because of the
6 MSA, those could have been eliminated prior to the
7 MSA, couldn't they have?
8 MR. MC CONNELL: Objection. Calls
9 for speculation.
10 A. It could have been eliminated. Yes.
11 Q. And the MSA also prohibits tobacco
12 companies from targeting young people with their
13 advertising, doesn't it?
14 A. There is a statement like that in the MSA.
15 That's correct.
16 Q. Let's talk about the MSA while
17 we're on the subject.
18 (Whereupon, Exhibit 5 is marked
19 for identification by the reporter.)
20 Q. Before I ask you about Exhibit
21 Number 5, aside from the things that were
22 prohibited in the MSA and the changes that were as
23 a result of the MSA, are there any other changes
24 in your marketing practices that you're aware of
25 since Mr. Szymanczyk became CEO of Philip Morris?
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 A. Yes. Mr. Szymanczyk -- Since
2 Mr. Szymanczyk became CEO we have eliminated the
3 use of back covers on magazines.
4 Q. Is that required by any regulation
5 or settlement agreement you're aware of?
6 A. No. It is not required by any law or any
7 agreement. It is a policy decision that Philip

8 Morris made.

9 Q. Have you ever discussed that
10 decision with Mr. Szymanczyk?

11 A. I have been in discussion with
12 Mr. Szymanczyk about it.

13 Q. When?

14 A. In the last six months.

15 Q. Tell me what the substance of
16 those conversations was.

17 A. The discussion was that we are -- there is
18 public opinion that suggests that children might
19 be exposed to our advertising by people that leave
20 magazines upside-down on their dining room table
21 or living room table and that while the magazines
22 that we advertise in are magazines that are
23 clearly directed and intended for adults, that a
24 child could, in fact, be exposed to one of our ads
25 and, therefore, as an added measure of protection

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1 against exposing kids to our advertising we chose
2 to eliminate it.

3 Q. Did you have any involvement in
4 the decision to eliminate it, or was it
5 Mr. Szymanczyk's decision to do that?

6 A. I was involved in the discussion leading
7 up to the decision. Mike was -- Mike and -- I
8 believe with talking to his managers made the
9 decision.

10 Q. Was any research done prior to
11 making that decision? By "research," any focus
12 groups' research done to determine whether or not
13 kids actually were being affected by that?

14 A. I'm not aware of any.

15 Q. Do you think Mr. Szymanczyk just
16 made that decision on his own that kids might be
17 exposed to it --

18 MR. MC CONNELL: Objection. Calls
19 for speculation.

20 Q. -- without any underlying data?

21 MR. MC CONNELL: I'm sorry to
22 interrupt your question.

23 MR. GRUENLOH: That's fine.

24 A. I don't know how Mr. Szymanczyk -- I can't
25 tell you how he thought.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. As vice president of marketing you
2 weren't consulted on that issue, what effect --
3 the issue being what effect if any -- if any, does
4 the back cover advertising have on kids?

5 A. As I believe I stated before, we had a
6 discussion. I was involved in the discussions as
7 to why we might choose to remove our advertising
8 from back covers which included criticism and
9 public opinion that it could and, in fact, did
10 expose children to our advertising.

11 Q. Is it your opinion that that could
12 have exposed children to your advertising?

13 A. Yes. I believe it is possible for a kid
14 to see a magazine that a parent has left upturned

15 in their home.
16 Q. Did you do any research on that,
17 anything to form the basis of that opinion?
18 A. No. I didn't do any formal market
19 research to figure that out.
20 Q. Did you ever do any research to
21 determine or are you aware of any research done at
22 Philip Morris that was done to determine how
23 important to sales those back cover ads were?
24 MR. MC CONNELL: Object to the
25 form.

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1 You can answer it.
2 A. Would you ask it again, please.
3 Q. Are you aware of any research that
4 was done at Philip Morris to determine how
5 important to sales those back cover ads were; in
6 other words, what effect it would have if you pull
7 those back cover ads out?
8 A. No. I'm not aware of any research that
9 was done.
10 Q. Do you think that issue was
11 considered before they were withdrawn?
12 MR. MC CONNELL: Objection to
13 form.
14 A. Say it again.
15 Q. Do you think that issue was
16 considered before the back page ads were
17 withdrawn?
18 A. Can you restate it with what the issue is?
19 Q. Sure.
20 Well, I'll withdraw the question.
21 Do you know if the withdrawal of
22 those back cover ads has had any effect upon the
23 sales?
24 A. No. I am not aware of any impact on the
25 sales, and I would not -- No.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 Q. Do you know how much money was
2 being spent on those back cover ads prior to them
3 being withdrawn?
4 A. I can't tell you that specifically here
5 and now. I would have -- It's a detail within a
6 budget that I would need to refer to.
7 Q. Do you know what's being done with
8 that money now that the ads have been withdrawn?
9 A. There are two parts to that answer. The
10 ads that were already committed to the publishing
11 companies have been replaced by ads from our youth
12 prevention smoking program, and when the
13 commitments to those back covers run out or, for
14 example, in like 2001 budget my budget will be
15 reduced, so that from a brand marketing budget we
16 will not be reinvesting that money in other media,
17 but for the commitments that had been made to
18 publishing companies we replace that with
19 noncigarette advertising, specifically some, if
20 not all, of it was replaced with youth smoking
21 prevention messages.

22 Q. You were telling me about the
23 changes in your marketing efforts that
24 Mr. Szymanczyk has effected. Can you continue
25 with that list?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. Yes. We have also suspended our
2 advertising in a number of magazines, somewhere
3 between 45 and 50, based on historically we had
4 advertised only in magazines that could certify
5 that their circulation was directed primarily --
6 And we used a measure of 85 percent. -- to people
7 who were 21 years and older, and we changed the
8 way that we measure whether a magazine is directed
9 to adults by looking at readership numbers that
10 are published by a couple of different external
11 research services. And by looking at those
12 readership numbers, which is the methodology that
13 had been proposed in the FDA proposal, looking at
14 those readership numbers as opposed to our
15 traditional means of evaluating, there were a
16 number of magazines, somewhere over 40, which did
17 not pass the standards that set -- we set, and so
18 we have suspended our advertising in those
19 magazines.

20 Q. So that's something that was
21 required by the MSA?

22 A. No, sir. It's a Philip Morris policy
23 only.

24 Q. When was that implemented?

25 A. In the last couple of months.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Is there any reason you're aware
2 of that that couldn't have been implemented prior
3 to the last couple of months?

4 A. I don't know when that data became
5 available, but it was certainly before the last
6 couple of months.

7 Q. So is there any reason that you're
8 aware of that they couldn't have done that
9 earlier?

10 A. Earlier, yes. No. There is no reason it
11 could not have been done earlier.

12 Q. What was the traditional method
13 that Philip Morris used to determine whether the
14 magazines were primarily read by adults?

15 A. The magazines and I believe outside
16 sources for the magazines provided their
17 circulation numbers, who their magazines were
18 being -- And this is the measurement upon which a
19 magazine sells its magazine. How many people it
20 is circulating to, and those were the numbers that
21 we would determine whether it's being primarily
22 circulated to adults.

23 Q. You said there were about 40
24 magazines that you withdrew your advertising in?

25 A. Somewhere between 40 and 50, maybe even a

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 couple more than 50.
2 Q. What effect did that have on your
3 marketing budget, if any?
4 A. Similar to the back covers. The magazines
5 that we already had commitments to we converted
6 those ads to youth smoking prevention and other
7 noncigarette ads, and in the future my media plans
8 will be reduced.
9 Q. Continue with the list of the
10 things that Mr. Szymanczyk has effected since he's
11 come up.
12 A. Those are the things that come to mind
13 right now.
14 Q. Those two?
15 A. Yes. In addition to all of the MSA
16 pieces.
17 MR. GRUENLOH: Why don't we take a
18 quick break before we go on to the next exhibit.
19 (Recess.)
20 Q. I would like you to take a look at
21 what's been marked as Exhibit Number 5 to the
22 deposition. It says, "A closer look at the
23 tobacco agreement."
24 Do you have that in front of you?
25 A. Yes.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Have you ever seen that before?
2 A. I'm not sure if I've seen this specific
3 execution, but I've seen something similar to it.
4 Q. Are you familiar with this
5 campaign?
6 A. Yes. Not -- I haven't been responsible.
7 I viewed it as a Philip Morris employee and as a
8 consumer when I open up my newspapers.
9 Q. You didn't work directly on it,
10 though?
11 A. This was not done by the Philip Morris
12 marketing company. I did not work on it.
13 Q. Who was it done by?
14 A. I believe it was done from our corporate
15 affairs department.
16 Q. Was it done in-house at corporate
17 affairs department or was an outside ad agency --
18 A. I don't know.
19 Q. -- retained to do it?
20 You don't know.
21 Do you know what the purpose of
22 this marketing campaign was?
23 A. No. I don't know the purpose.
24 Q. Have you done any research,
25 consumer research, focusing groups, marketing
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 research relating to this campaign?
2 A. No. I haven't had anything to do with
3 this campaign.
4 Q. Have you ever discussed this
5 campaign with Mr. Szymanczyk?
6 A. No, sir.
7 Q. Have you ever discussed this

8 campaign with anybody?
9 A. No.
10 Q. Where have you seen it?
11 A. In either the New York Times, the Wall
12 Street Journal, or USA Today, which are the
13 newspapers I read regularly.
14 Q. Have you seen it on TV?
15 A. I've seen ads on TV about Philip Morris
16 and about the master settlement agreement, yes.
17 Or I've seen an ad on TV about Philip Morris about
18 the master settlement agreement.
19 Q. Do you know what the purpose of
20 that ad is?
21 A. The purpose of the ad is to communicate
22 what the master settlement agreement is.
23 Q. Is that the only purpose that
24 you're aware of?
25 A. That's the only purpose I'm aware of.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. And again you're not aware of any
2 research or anything that's been done to --
3 A. No, sir. I was not involved in that.
4 Q. Do you know where else this ad has
5 appeared?
6 A. No.
7 Q. Do you know if it's appeared in
8 West Virginia?
9 A. I don't know whether it has or not.
10 Q. Is it a national campaign?
11 A. I don't know.
12 Q. Do you know what the budget of
13 this was?
14 A. No, I don't.
15 Q. Are you aware of the comments
16 Mr. Szymanczyk made at the Engle trial that Philip
17 Morris was out of alignment with society's
18 expectations of it?
19 A. I don't recall those specific words, but I
20 recall a comment to that communication.
21 Q. Well, did you review it in a
22 transcript?
23 A. No. I think that that was one of the
24 things that was quoted either in newspapers or
25 press releases that I would have read.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Have you ever talked to
2 Mr. Szymanczyk about it?
3 A. I have not talked to Mr. Szymanczyk about
4 his Engle testimony.
5 Q. Have you ever talked to
6 Mr. Szymanczyk about that particular point which
7 he made in his Engle testimony that Philip Morris
8 was, in fact, out of alignment with society's
9 expectations of it?
10 A. Not specifically.
11 Q. Do you believe that Philip Morris
12 was ever out of alignment with society's
13 expectations of it?
14 A. Yes, I do.

15 Q. In what way?
16 A. That the public opinion has been critical
17 of our business and our practices and expected us
18 to behave in other manners that are things -- the
19 sort of things that, in fact, were executed in the
20 master settlement agreement.
21 Q. Do you agree with the public
22 opinion on that point?
23 A. Which public opinion?
24 Q. The public opinion you just
25 expressed in your answer.
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 A. That they expected us to behave
2 differently?
3 Q. Yes.
4 A. Yes. I believe we needed to act
5 differently to garner the public opinion's
6 respect.
7 Q. Is that the only reason you needed
8 to act differently, just to garner the public
9 opinion's respect?
10 A. Yes. I believe the actions we've taken in
11 the MSA and the other actions I talked about are
12 ways in order for us to demonstrate our
13 responsibility.
14 Q. Tell me some of the criticisms
15 that you're aware of made by the public that led
16 to Mr. Szymanczyk's statements at the Engle trial
17 that Philip Morris was out of alignment with
18 society's expectations of it.
19 MR. MC CONNELL: Objection. Calls
20 for speculation.
21 Q. If you know.
22 A. I don't know what specific things he was
23 referring to.
24 Q. If a cigarette company marketed
25 its product to children and targeted children in
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 those marketing efforts would that cigarette
2 company be out of alignment with society's
3 expectations of it?
4 A. If cigarette companies marketed products
5 to children they would be out of alignment with
6 society's expectations. Yes.
7 Q. Is that what Mr. Szymanczyk was
8 referring to in his Engle testimony? Do you know?
9 A. No. I do not believe so. I do not
10 believe that Mr. Szymanczyk believed that Philip
11 Morris was marketing its products to children.
12 Q. Tell me what he was referring to
13 then, if you know. What actions that Philip
14 Morris took was he referring to when he said
15 Philip Morris was out of alignment with society's
16 expectations? What is it that he was referring
17 to?
18 A. That he was referring to behavior in the
19 course of our business in marketing to adults that
20 were perceived by others differently.
21 Q. Tell me specifically what you are

22 referring to. What behavior?
23 A. A good example is the back covers of
24 magazines. Those magazines were targeted to
25 adults and in adult publications, and because the
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1 possibility of exposure to a child or a belief
2 that children could be exposed to it that is a
3 higher expectation that society had that we have
4 chosen to execute.

5 Q. If a cigarette company publicly
6 denied that their products caused cancer and were
7 addictive would that cigarette company be out of
8 alignment with society's expectations of it?

9 MR. MC CONNELL: Do you want to
10 put a time frame on that?

11 A. Could you be more specific.

12 Q. Do you need a time frame? All
13 right. If a cigarette company publicly denied in
14 1997 that cigarettes caused lung cancer and other
15 serious diseases and that the products are
16 addictive, would that be out of alignment with
17 society's expectations of it?

18 A. Once again, as earlier, you're getting out
19 of my area of expertise and scientific expertise
20 in terms of some specific language. However, I
21 think that if a cigarette company didn't
22 acknowledge that cigarettes were harmful and could
23 result in lung cancer and other diseases and could
24 be difficult for people to quit smoking, I think
25 that would be not responsible.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Is that what Mr. Szymanczyk was
2 referring to in his testimony when he said that
3 Philip Morris was out of alignment with society's
4 expectations of it?

5 A. I do not know what Mr. Szymanczyk was
6 referring to.

7 Q. Did you ever ask him?

8 A. No. I did not.

9 Q. If a cigarette company engaged in
10 debate with the public health authorities as to
11 whether or not cigarettes did, in fact, cause
12 cancer, they engaged in such a debate with them,
13 let's say in 1995, would that have been out of
14 alignment with society's expectations of them?

15 A. I don't know what society's expectations
16 are and what engaging in debate would be. I don't
17 know that I can answer that question.

18 Q. What do you think? Should
19 cigarette companies have engaged in debate with
20 the public health authorities in 1995 as to
21 whether cigarettes cause lung cancer and other
22 serious diseases?

23 MR. MC CONNELL: Objection. Scope
24 and expertise, but you can answer.

25 Q. Should they have done that?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. Once again, not being a doctor or
2 scientist I don't know that I'm equipped to talk
3 about engaging in debate with public health
4 people.

5 Q. Do you have to be a doctor or
6 scientist to answer that question?

7 MR. MC CONNELL: To answer it as
8 an expert?

9 A. I don't know what "engaging with the
10 public health officials" means, so it is not
11 something that I would personally do.

12 Q. Let's go back to your report.
13 If you look at the third
14 paragraph, the last sentence, "The marketing of
15 cigarettes, like that of other consumer products
16 for which the existence and nature is well-known
17 among potential consumers, does not attempt to
18 attract nonusers of the product but instead seeks
19 to differentiate brands available to consumers who
20 have chosen to use the product."

21 Part of that statement that I'm
22 interested in is the part in between the commas
23 that reads, "like that of other consumer products
24 for which the existence and nature is well-known
25 among potential consumers." Do you see that?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. Yes.

2 Q. What do you mean by that?

3 A. That cigarettes are a product that the
4 general public knows what they are, just like many
5 of the products that I marketed at Procter &
6 Gamble are products that people know what they are
7 and what benefits they have to offer. Bar soap.
8 I managed the Ivory bar soap business, and the
9 general population knows that soap is a product
10 that creates soap suds that help you clean dirt
11 off your body.

12 Q. When I asked you the question
13 before, Do you consider yourself an expert in
14 consumer perceptions, I thought you said no. Do
15 you remember that?

16 A. You asked me a question about a specific
17 study or area, an expertise in a field of study, I
18 believe.

19 Q. Let me ask you again.

20 Do you consider yourself an expert
21 in consumer behavior, consumer perception, in
22 those two fields?

23 A. Yes.

24 Q. When I asked you that question
25 earlier you said no. Why is that?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. Well, the way that the question was
2 phrased I thought you were asking me for a
3 specific analytical academic field of study and
4 not how consumers behave in accordance to buying
5 the products that I have marketed.

6 Q. I see.

7 A. It was phrased in an academic subject

8 matter.
9 Q. What is it that qualifies you as
10 an expert in consumer behavior?
11 A. I have been marketing consumer products to
12 consumers since 1978.
13 Q. And when I asked you before if you
14 had any formal education in consumer behavior,
15 consumer perception, I think you told me no?
16 A. I have not gone to a university to study a
17 subject called consumer behavior. No.
18 Q. And you've never published on that
19 subject, have you?
20 A. No. I've never published on that subject.
21 Q. When you say in that sentence,
22 "the nature is well-known," do you mean by that
23 the deadly nature of cigarettes?
24 A. No. I mean what the product is and what
25 it provides the consumer, whether it be soap suds
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 or the taste of tobacco or the ability to make
2 your clothes static-cling-resistant to fabric
3 softener.
4 Q. Is it your opinion that consumers
5 are aware that cigarettes cause cancer?
6 A. Yes. I believe that consumers are aware
7 that cigarettes are harmful and can cause cancer.
8 Q. But that wasn't my question. My
9 question was, is it your opinion that cigarette
10 smokers know that cigarettes cause cancer. That's
11 a different question than the one you answered.
12 MR. MC CONNELL: I disagree, but
13 go ahead and answer it.
14 A. I believe that consumers know and
15 understand that smoking cigarettes can result in
16 them developing cancer.
17 Q. It's a very simple question. Yes
18 or no. Is it your opinion that cigarette -- that
19 cigarette smokers know that cigarettes cause
20 cancer. Yes or no?
21 MR. MC CONNELL: Asked and
22 answered.
23 You don't have to answer yes or no
24 if you have to explain your answer.
25 Q. Do you have to qualify your
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 answer?
2 A. I've answered the question twice.
3 MR. MC CONNELL: Argumentative.
4 Q. And you've qualified it each time.
5 You can't answer yes or no to that question?
6 MR. MC CONNELL: Asked and
7 answered.
8 A. I believe I've answered your question,
9 sir.
10 Q. Is it your opinion that cigarette
11 smokers know that cigarettes are addictive?
12 A. I don't know.
13 Q. As a matter of fact, when I asked
14 you those two questions today, do you know whether

15 cigarettes cause cancer and whether you know
16 whether cigarettes are addictive, you didn't know.
17 Is that correct?

18 MR. MC CONNELL: The record will
19 speak for itself.

20 Q. Do you recall that?

21 A. I don't believe I answered the question "I
22 don't know."

23 Q. When did the cigarette industry
24 know that cigarettes are addictive?

25 A. I don't know.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Do you know when Philip Morris
2 knew that the cigarettes are addictive?

3 A. I don't know.

4 Q. Do you know when Philip Morris
5 knew that cigarettes cause cancer, cause lung
6 cancer and other serious diseases?

7 A. No. I don't know that, sir.

8 MR. GRUENLOH: Give me one second.

9 Q. I want you to look at the last
10 full paragraph on the first page of your report.
11 The sentence that reads, "Miss LeVan is also
12 expected to testify about." Can you please read
13 that to yourself.

14 MR. MC CONNELL: You're talking
15 about the paragraph that starts but carries over
16 to the second page?

17 MR. GRUENLOH: Right.

18 MR. MC CONNELL: Thanks.

19 Q. See where it says that Philip
20 Morris marketing plans don't evidence an intent to
21 market to nonsmokers or to minors?

22 A. Yes, sir.

23 Q. What documents and marketing
24 programs are you referring to when you make that
25 statement?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 A. I'm referring to documents that are brand
2 annual plans which are written every year and are
3 oftentimes revised midway in a revised year plan,
4 and they're also compiled into a five-year plan.

5 Q. Anything else?

6 A. There may be additional documents that are
7 specific to the execution of programs that are put
8 together in a total year plan in those documents.

9 Q. Anything else?

10 A. No.

11 Q. You haven't brought any of those
12 documents with you to the deposition, have you?

13 A. No, sir. They were included in the
14 Oklahoma files.

15 Q. Can you name for me, specifically
16 by author, date, or Bates number, any of those
17 documents?

18 A. No, because I can't match up dates and
19 authors without having them here, but they would
20 be things that have titles like Virginia Slims
21 Brand Plans, 1992, for example.

22 Q. Have you done any search to
23 determine whether there were any Philip Morris
24 documents which do evidence an intent to target
25 minors or nonsmokers?

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 MR. MC CONNELL: I think that was
2 asked.

3 A. Yes. As I talked before, I have been
4 through many of the historical brand plans and
5 other marketing project documents for my specific
6 brands in the course of running my businesses as
7 well as my exposure to any of the documents in the
8 process of determining confidentiality for the
9 archives.

10 Q. And you've never seen a document
11 which evidences an intent on behalf of Philip
12 Morris to target minors or nonsmokers. Is that
13 your testimony today?

14 A. No. I have never seen a document that
15 says that Philip Morris intends to market their
16 products to children.

17 Q. What's a Synar amendment?
18 S-Y-N-A-R. Do you know what that is?

19 A. I don't recall that.

20 Q. Let's look at the second paragraph
21 of your report on Page 2.

22 MR. MC CONNELL: Ms. LeVan is
23 familiar?

24 MR. GRUENLOH: Yes.

25 Q. You reference studies and

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1 literature there. "Independent studies and
2 literature that conclude that tobacco marketing
3 has little, if any, influence on smoking
4 initiation, particularly among minors."

5 What studies and literature are
6 you talking about there?

7 A. I'm referring to a large body of studies,
8 some that have been done that are governmental
9 studies including FTC reports as well as
10 international studies where marketing cigarettes
11 have eliminated and the effect of that on smoking
12 incidence.

13 Q. Can you name for me by Bates
14 number, title, author, date, any of those
15 documents?

16 A. I cannot name anything by Bates number.

17 Q. You haven't brought any of those
18 documents with you today, have you?

19 A. They were in the Oklahoma files.

20 Q. But you haven't brought any of
21 those documents with you today.

22 A. No, sir.

23 Q. You agree with the conclusion of
24 "the independent studies and literature that peer
25 and family influence have far more impact than

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1 tobacco marketing on smoking habits of minors"?
2 That's the next sentence. Do you see that?
3 A. Yes.
4 Q. "Studies and literature," are you
5 referring to there?
6 A. Yes.
7 Q. Again you can't identify any of
8 those for me today, can you?
9 A. I don't have any of those here with me,
10 and I can't identify anything by Bates numbers.
11 Q. What about by author?
12 A. I can't give you authors' names.
13 Q. Title?
14 A. No.
15 Q. Date?
16 A. No.
17 MR. GRUENLOH: I just want the
18 record to reflect at this point that plaintiffs'
19 counsel were not put on notice that the reliance
20 materials would be the same for this case, nor
21 were they given a list of any of the reliance
22 materials for this particular expert. I'm going
23 to reserve the right to question this expert on
24 the reliance materials at such time that we
25 receive those reliance materials or find those
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 reliance materials.
2 MR. MC CONNELL: I'm sure you
3 won't take my silence as acquiescence, but the
4 record will note your position.
5 Q. Have you reviewed the reports of
6 any other experts in this case?
7 A. In this West Virginia case?
8 Q. Yes.
9 A. No.
10 Q. If you look at the fourth
11 paragraph down on your report, it says, "Finally,
12 Miss LeVan may be asked to comment on the opinions
13 expressed by other witnesses as well as the
14 evidence they rely upon to the extent that such
15 opinions and evidence relate to my area of
16 expertise."
17 Do you see that?
18 A. Yes, sir.
19 Q. Do you intend to rely on any other
20 experts' reports in this case or reliance
21 materials in this case?
22 MR. MC CONNELL: Objection. Calls
23 for speculation.
24 Answer the question if you can.
25 Q. Do you intend to review any other
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1 expert reports aside from your own in this case?
2 A. I have not done that, no.
3 Q. Do you intend to prior to trial?
4 A. I don't know.
5 Q. Aside from the documents that
6 you've indicated you already looked at, which were
7 your reliance materials for the Oklahoma case, do

8 you intend to review any other documents which
9 you'll base your opinion on prior to trial?
10 A. I have no intention to do that now.
11 Q. Who else have you talked to in
12 preparation for this deposition aside from the
13 lawyers that you told me about earlier?
14 A. No one.
15 Q. Did you talk with any Philip
16 Morris employees about your deposition?
17 A. Not other than telling my secretary where
18 I was going to be today.
19 Q. You didn't discuss this deposition
20 with Mr. Szymanczyk?
21 A. No.
22 Q. Miss Merlo?
23 A. No.
24 Q. What about consultants? Any other
25 consultants, nonlawyers? Did you discuss the
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1 deposition with anyone?
2 A. No.
3 Q. Have you discussed this case with
4 anyone aside from the people that you've indicated
5 already?
6 A. No.
7 Q. Do you own stock in Philip Morris?
8 A. Yes, I do.
9 Q. How much do you have?
10 A. I don't know.
11 Q. Do you know the worth of it?
12 A. No, I don't.
13 Q. You don't know how many shares?
14 A. No, I don't.
15 Q. Do you have options as well?
16 A. Yes.
17 Q. You don't know how many options?
18 A. No, I don't.
19 Q. Generally how long does a new
20 product have to be in the market before you deem
21 that that product has either been successful or
22 failed on the market?
23 A. I don't believe that there is a number on
24 that. It differs by product. It differs by
25 product category. It differs by what it is, so
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1 there is no general answer to that question.
2 Q. Is a year long enough to determine
3 whether a product has been successful or failed in
4 the market?
5 A. It depends on what it is.
6 Q. What else would you need to know
7 to determine that, whether the product had failed
8 or been successful? What other factors are
9 important?
10 A. Well, it depends on what the product is
11 and what the criteria for success of that product
12 are. If you can give me a specific situation I
13 could give you a more specific answer.
14 Q. All right. How about a new brand

15 of cigarettes?
16 A. A new brand of cigarettes in test market
17 could most likely be read in a year.
18 Q. Does it take longer in some
19 instances?
20 A. It could, and it could take far less time,
21 also.
22 Q. Can you give me a range?
23 A. I think that depending on what the product
24 was and what they were trying to accomplish with
25 it it could be five or six months or it could be

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 several years.
2 Q. Several years?
3 A. Uh-huh.
4 Q. To your knowledge has Philip
5 Morris or any other tobacco company ever marketed
6 a new brand of cigarettes using the term "safer
7 cigarette"?
8 A. I'm not acquainted with using the term
9 "safer cigarette" from Philip Morris. No, sir.
10 Q. Same question, but the term --
11 replace the term "safer cigarette" with "healthier
12 cigarette."
13 A. I'm not acquainted with marketing that
14 would -- from Philip Morris that would talk about
15 a healthier cigarette.
16 Q. How about a less hazardous
17 cigarette?
18 A. Once again, I'm not acquainted with the
19 term "less hazardous" in any of our marketing
20 campaigns.
21 Q. Are you aware of any research that
22 Philip Morris has ever done on how such a campaign
23 would do?
24 A. I'm not acquainted with any that use those
25 specific terms.

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SUZANNE LE VAN - EX. BY MR. GRUENLOH

1 Q. Are you familiar with Premiere and
2 Eclipse, those two cigarette brands?
3 A. I'm aware of those brands that are from
4 one of my competitors.
5 Q. Let me ask you about Premiere. Do
6 you know if Premiere was marketed as a healthy
7 cigarette?
8 A. I don't know.
9 Q. Do you know if it was marketed as
10 a safer cigarette?
11 A. I don't know.
12 Q. Do you know if Philip Morris ever
13 did any analysis of Premiere's marketing?
14 A. I'm not acquainted with any. I don't know
15 if they would have or not.
16 Q. As vice president of marketing
17 wouldn't you be acquainted with it if it existed?
18 A. I believe that that was prior to my
19 joining the company and that the Premiere test
20 markets were closed before I joined the company.
21 Q. So because it was prior to your

22 joining the company you're not aware of it?
23 A. I'm not aware of all the research that was
24 done prior to my joining the company. No, sir.
25 Q. And you're not aware of all the
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SUZANNE LE VAN - EX. BY MR. GRUENLOH
1 documents which relate to that research prior to
2 you joining the company, are you?
3 A. No, sir.
4 MR. GRUENLOH: I have no further
5 questions.
6 MR. MC CONNELL: I have no
7 questions.
8 Does anybody on the line have any
9 questions?
10 MR. JERNIGAN: No questions.
11 MR. MC HUGH: No questions.

12
13 (Whereupon, the deposition is
14 concluded at 1:05 p.m.)

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16 (The exhibits are retained by the
17 reporter.)
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13 (No Information Requested)
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1 SIGNATURE OF DEPONENT

2
3 I, the undersigned, SUZANNE
4 LE VAN, do hereby certify that I have read the
5 foregoing deposition and find it to be a true and
6 accurate transcription of my testimony, with the
7 following corrections, if any:

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9	PAGE	LINE	CHANGE	REASON

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Date

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1 C E R T I F I C A T I O N

2
3 I, PATRICIA M. MULLIGAN, a Certified
4 Shorthand Reporter and Notary Public of the State of
5 New Jersey, do hereby certify that prior to the
6 commencement of the examination the witness was
7 sworn by me to testify as to the truth, the whole
8 truth, and nothing but the truth.
9 I do further certify that the foregoing is a
10 true and accurate transcript of the testimony as
11 taken stenographically by and before me at the

12 time, place, and on the date hereinbefore set forth.
13 I do further certify that I am neither of
14 counsel nor attorney for any party in this action
15 and that I am not interested in the event nor
16 outcome of this litigation.

17
18

19

Notary Public of the State of New Jersey
Certificate No. XI00780

20

21

22

23

Dated:

24

25

My Commission expires October 23, 2000.

A. WILLIAMS ROBERTS, JR., & ASSOCIATES